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TAN SRI DATO' KAM WOON WAH v. DATO' SRI ANDREW KAM TAI YEOW & ANOR

HIGH COURT MALAYA, KUALA LUMPUR
HAYATUL AKMAL ABDUL AZIZ J
[SUIT NO: WA-22NCVC-822-12-2021]
6 MARCH 2022

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Abstract – *An ad interim injunction is formulated to maintain the status quo of litigating parties pending the disposal of an existing inter partes application between them. It is a fresh order that the judge decides by considering whether there is a need to maintain the status quo. The threshold in granting an ad interim injunction is low. The court should not be required to consider the question of balance of convenience, which would be dealt with at the inter partes stage. It is discretionary and may be allowed even if the parties do not consent to it being granted.*

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CIVIL PROCEDURE: *Injunction – Interim – Familial dispute between parties – Son and granddaughter ('family members') sought to declare father/grandfather ('applicant') mentally incapable of managing affairs – Application to restrain family members from making any application under s. 52 of Mental Health Act 2001 or pursuing any proceedings under same Act against applicant – Whether proceedings contemplated by family members frivolous, vexatious, oppressive and abuse of court process – Whether family members had clinical or medical evidence to support diagnosis or suggest that applicant suffered from mental incapacity – Whether just and equitable that applicant's interest was protected by immediate issue of injunction – Whether balance of conveniences favoured preserving status quo by granting injunction*

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The parties were related to each other; the plaintiff was the father to the first defendant and the grandfather to the second defendant, who was the daughter of the first defendant. There was, at present, a familial dispute amongst them. The defendants were seeking to declare the plaintiff, a 92-year-old man, as mentally incapable of managing his affairs. A glimpse into the plaintiff's background showed that he was (i) an advocate and solicitor of the High Court of Malaysia but was no longer in active practice since 2018; (ii) a barrister at law of the Middle Temple; (iii) a well-known personality and respected businessman; and (iv) former member of Parliament and former Secretary-General of the Malaysian Chinese Association (MCA). The plaintiff applied for an *inter parte* interim injunction ('encl. 4'), anchored on a certificate of urgency ('encl. 7') to restrain the defendants from making any application, pursuant to s. 52 of the Mental Health Act 2001 ('Act'), or pursuing any proceedings under the same Act against the plaintiff. In support of his application, the plaintiff submitted that he had established a *prima facie* case in that any proceedings under the Act, contemplated by the defendants against him would be frivolous, vexatious, oppressive and abuse of court

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process as (i) the defendants had no clinical or medical evidence to support a diagnosis or even suggest that the plaintiff suffered from mental incapacity; (ii) the consultant psychiatrist's report confirmed that the plaintiff did not suffer from such mental capacity, as alleged; (iii) the defendants' action, under the Act, was an attempt to mitigate a succession of losses by the first defendant in his legal battles with the plaintiff, including attempts to commit the plaintiff to prison; (iv) it was just and equitable that the plaintiff's interest was protected by the immediate issue of an interlocutory injunction. The mere filing of a proceeding under the Act against the plaintiff would subject him to public ridicule, contempt and irreparable harm to a person of his standing. It would also pave the way for the defendants to halt the ongoing legal proceedings between them and escape liability from judgments obtained by the plaintiff against the first defendant; and (v) the balance of conveniences favoured preserving the *status quo* by granting the interlocutory injunction prayed for pending the disposal of this suit.

Held (allowing encl. 4):

(1) The defendants were injuncted from prosecuting any purported proceedings under the Act, inclusive of OS:2619. The defendants had been put on prior express notice of the *quia timet* injunction pending in the court, but they, however, in haste proceeded with the filing of the OS:2619. The evidence relied on by the defendants was the evidence of a layman with no qualification to make a determination or suggestion on the mental health of the plaintiff. A person with the social standing of the plaintiff, would undoubtedly suffer imminent irreparable damage to his social standing if the *ad-interim quia timet* injunction was not granted to preserve the *status quo* of parties pending the determination of parties' rights. The balance of convenience favoured preserving the *status quo* by granting the interlocutory injunction prayed pending the disposal of encl. 4. (para 15)

(2) There was a qualified, unrefuted diagnosis by a duly qualified medical practitioner in the related field, a consultant psychiatrist, who had carried out a neuropsychiatric evaluation, and certifying that the plaintiff had no identifiable psychiatric or neurological disorders and that he could live an active life and be involved with his business and life in general. On the other hand, the defendants, attempting to say otherwise, predicated on the evidence of a layman, namely an affidavit and statutory declaration, based allegedly on a telephone conversation of approximately two minutes in duration that he found the plaintiff to be incoherent. This evidence was already used by the defendants to seek an adjournment in the Court of Appeal hearing, which was denied and the same untested evidence is now being used for OS:2619. The merits of encl. 4 have not yet been fully canvassed and ventilated by this court. (para 19)

Case(s) referred to:

Asia Pacific Higher Learning Sdn Bhd v. Majlis Perubatan Malaysia & Anor [2020] 3 CLJ 153 FC ***(refd)***

Jaya Sudhir Jayaram v. Nautical Supreme Sdn Bhd & Ors [2019] 7 CLJ 395 FC ***(refd)***

Kanhk Sunder Bibi v. Ram Lekhan Pandey AIR 1956 Pat 325 ***(refd)***

Keet Gerald Francis Noel John v. Mohd Noor & Ors [1995] 1 CLJ 293 CA ***(refd)***

Mobikom Sdn Bhd v. Inmiss Communications Sdn Bhd [2007] 3 CLJ 295 CA ***(refd)***

Monatech (M) Sdn Bhd v. Jasa Keramat Sdn Bhd [2002] 4 CLJ 401 FC ***(refd)***

Petrodar Operating Co Ltd v. Nam Fatt Corporation Bhd & Anor [2014] 1 CLJ 18 FC ***(refd)***

PPES Resorts Sdn Bhd v. Keruntum Sdn Bhd [1990] 1 CLJ 528; [1990] 2 CLJ (Rep) 649 HC ***(refd)***

Syarikat Faiza Sdn Bhd & Anor v. Faiz Rice Sdn Bhd & Anor And Another Case [2017] 1 LNS 1648 HC ***(refd)***

Tan Kok Tong v. Hoe Hong Trading Co Sdn Bhd [2007] 2 CLJ 305 CA ***(refd)***

Tetuan J & S Holdings Sdn Bhd v. A Karim Hasan & Anor [2000] 4 CLJ 152 HC ***(refd)***

Ting Chuen Peng & Ors v. Yap Kiam & Anor [2016] 10 CLJ 688 HC ***(refd)***

Legislation referred to:

Mental Health Act 2001, s. 52

Specific Relief Act 1950, ss. 50, 54(b)

For the plaintiff - Gopal Sri Ram, Wong Yee Chue, Lai Wing Ee & How Li Nee; M/s YC Wong

For the 1st defendant - Gobind Singh Deo & Tan Cheng Leong; M/s KP Lu & Tan

For the 2nd defendant - Anantha Krishnan; M/s Anantha Krishnan

Reported by Najib Tamby

JUDGMENT

(encl. 4)

Hayatul Akmal Abdul Aziz J:

Introduction

[1] The plaintiff, in this case, had applied under a certificate of urgency for an interlocutory injunction pending the final disposal of the writ filed, as follows:

> (2) That in the event the defendants or any of them have commenced any proceeding under the Mental Health Act 2001 against the plaintiff as at the date of the order to be made herein, the defendants and each of them by themselves their solicitors or agents or servants or otherwise be restrained, and an injunction be granted restraining them and each of them from taking any further steps in such proceeding pending the final disposal of this Suit;
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> (3) That a penal notice in Form 83(b) of the Rules of Court 2012 be indorsed on the order to be made herein.

[2] The cause papers and written submissions are as follows:

(i) notice of application dated 20 December 2021 (encl. 4);

(ii) plaintiff's affidavit in support jilid 1 affirmed by Tan Sri Dato' Kam Woon Wah on 20 December 2021 (encl. 5);

(iii) plaintiff's affidavit in support jilid 2 affirmed by Tan Sri Dato' Kam Woon Wah 20 December 2021 (encl. 6);

(iv) certificate of urgency filed by Lai Wing Ee, the solicitor for the plaintiff (encl. 7);

(v) affidavit of service (1) affirmed by Nurul Hani Azwa on 24 December 2021 (encl. 13);

(vi) affidavit of service (2) affirmed by Kanakendram a/l Rajakulendram on 24 December 2021 (encl. 14); and

submissions by the plaintiff (encl. 11) and oral submissions/reply by learned counsels for the plaintiff and the defendants.

[3] On 27 December 2021, after perusing the cause papers and hearing the counsels' submissions, I allowed the plaintiff's application (encl. 4). An *ad-interim* injunction was granted pending the *inter parte* hearing of encl. 4, with no order as to costs. Dissatisfied, the defendants had filed this appeal (encl. 19 and 24, respectively), and my reasons are as follows:

Preface

[4] The parties before this court are related to each other. The plaintiff (P) is the father to the first defendant (D1) and the grandfather to the second defendant (D2), who is the daughter of D1. There is presently a familial dispute amongst the parties where the Ds' are allegedly seeking to declare P as mentally incapable of managing his affairs. Learned counsel for P had applied for an interim injunction (encl. 4), anchored on a certificate of urgency (encl. 7) to restrain the Ds' from making any application under s. 52 of the Mental Health Act 2001 or pursuing any proceeding under the Mental Health Act 2001 against P. This encl. 4 was filed by P as an *inter parte* application instead of an *ex parte* one. This matter proceeded without any affidavits filed and/or written submissions filed by the Ds' who were asking for time to respond and file their necessary papers. Nevertheless, this matter was heard and learned counsels argued orally whether an *ad-interim* injunction should be granted pending the substantive hearing of encl. 4.

Brief Facts

[5] The brief facts presented to the court, are as follows:

(i) P, aged 92 years old:

(a) Is an advocate and solicitor of the High Court of Malaya but no longer in active practice since 2018.

A (b) He is a Barrister at Law of the Middle Temple.

(c) He is a well-known personality and respected businessman in the community.

(d) He is a former Member of Parliament and the former Secretary-
B General of the Malaysian Chinese Association or MCA.

(ii) D1, aged 60 years old:

(a) Is P's son and an advocate and solicitor of the High Court of Malaya.

(b) P had disowned him (The Star dated 7 March 2019: KWW-1:
C encl. 5).

(c) He is an allegedly failed businessman who is a compulsive gambler. His creditors (including casinos and the EPF board) obtained numerous judgments against him (refer encl. 5, pp. 5-10).

D (d) At the time of the filing of this suit, several ongoing suits and appeals between P and/or the companies to which he is in control with D1, particulars of which are set out in para. 6 of the affidavits in support.

(iii) D2, aged 30 years old:

E (a) Is the daughter of D1 and P's granddaughter.

(b) D2 is also an advocate and solicitor of the High Court of Malaya.

(c) P has also disowned D2.

(d) There are ongoing proceedings brought by the P against D2 when
F filing this action.

(iv) In a letter written by Messrs Thomas Philip solicitors for the Ds' at the time, to the courts, they have alleged that P suffers from mental illness and/or is incapable of managing his affairs. The Ds' allegedly threatened to institute proceedings under the Mental Health Act 2001 against
G P based on an affidavit and a statutory declaration by one Tan Sri Muhammad Shafee Abdullah ("Shafee"), both dated 6 December 2021 (exhs: KWW-15, KWW-16, and exh: KWW-17 of encl. 6). In his affidavit and statutory declaration, Shafee had merely alleged that in a telephone conversation between him and the P (way back in September
H 2021), P sounded "incoherent" in his speech.

(v) P and his sister each filed an affidavit in reply dated 10 December 2021 rebutting Shafee's affidavit (exhs: KWW-18 and KWW-19 of encl. 6). They averred that P is mentally sound and perfectly capable of managing his affairs.

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(vi) Through his solicitors Messrs YC Wong, P replied to Messrs Thomas Philip's letter and refuted the Ds' false allegations (exhs: KWW-20 and KWW-21 of encl. 6). A

(vii) A report dated 16 December 2021 by a consultant psychiatrist, Dr Deva Dass, who certifies that P has no identifiable psychiatric or neurological disorders, which allows him to live an active life and be very involved with his business and life in general (exh: KWW-22 of encl. 6). B

I heard parties on 27 December 2021. After perusing the cause papers and submissions (written/oral) from all learned counsels, an *ad-interim* injunction was granted pending the determination of the merits of this application. The defendants are now appealing against this *ad-interim* injunction order though *inter parties* arguments on merits have been fixed on 10 March 2022 (extended to 18 March 2022). C

The Plaintiff's Submissions D

[6] Learned counsel cited (among the cases):

Mobikom Sdn Bhd v. Inmiss Communications Sdn Bhd [2007] 3 CLJ 295; [2007] 3 MLJ 316, 321, CA.

> The Court of Appeal held that a court has jurisdiction and power to grant an anti-suit injunction whenever the interests of justice call for or demand it. One such example is an injunction to restrain the presentation of a winding-up petition. When a court restrains the presentation of a winding-up petition, it exercises part of its inherent jurisdiction to prevent abuse of its process. On the basis, that presentation of a winding-up petition might cause irreparable damage to the company. E F

Tan Kok Tong v. Hoe Hong Trading Co Sdn Bhd [2007] 2 CLJ 305; [2007] 4 MLJ 355, 359, CA.

> The Court of Appeal stated that every court has inherent jurisdiction to prevent an abuse of its process. It is a jurisdiction that is essential to ensure that the court's process is not used for a collateral purpose; that is to say, for a purpose other than to obtain redress for a genuine grievance. When a court exercises its discretion to issue an injunction to restrain the presentation of a winding-up, it exercises its inherent jurisdiction. It does so in order to prevent an abuse of its process. The Court of Appeal also stated that in an application for interlocutory injunction to restrain the presentation of a winding-up petition, the plaintiff bears the burden of establishing a *prima facie* case. A court will grant an interlocutory injunction whenever it is just and equitable to do so. Whether it is just and equitable to issue an injunction in a given fact pattern must vary from case to case. Accordingly, it is not practical just to apply a uniform or standard measure for a wide-ranging set of circumstances. That is because equitable relief is flexible, and to apply a standard formula would be to deprive or erode the wide discretion which a court has in deciding whether or not to grant interim equitable relief. G H I

[7] In the premise, P submitted that he had established a *prima facie* case in that any proceedings under the Mental Health Act 2001 that are contemplated by the Ds' against him will be frivolous, vexatious, oppressive, and an abuse of the process, based on the following:

(i) The Ds' have no clinical or medical evidence to support a diagnosis or even suggest that P suffers from mental incapacity.

(ii) The consultant psychiatrist's report confirms that P does not suffer from such mental incapacity as alleged.

(iii) It is evident that this action by the Ds' under the Mental Health Act 2001 is an attempt to mitigate a succession of losses by D1 in his legal battles with P, including attempts to commit P to prison.

(iv) Based on the foregoing, it is submitted that it is just and equitable that P's interest is protected by the immediate issue of an interlocutory injunction. The mere filing of a proceeding under the Mental Health Act 2001 (including an application under s. 52 thereof) against P will subject him to public ridicule, contempt and such a proceeding will cause a person of P's standing irreparable harm.

(v) It will also pave the way for the Ds' to halt the ongoing legal proceedings between them and escape liability from judgments obtained against D1 by P.

(vi) P submitted that the balance of convenience favours preserving the *status quo* by granting the interlocutory injunction prayed for herein pending the disposal of this suit. In the premises, the plaintiff prays for an order in terms of his application in encl. 4.

(vii) Learned counsel for P also argued that P is not attempting to injunct the court but to injunct the Ds' from commencing or initiating or prosecuting any action under the Mental Health Act 2001 against P.

[8] Though P could have proceeded on an *ex parte* basis, on the advice 190 of counsel, he elected to pursue encl. 4 on an *inter parte* basis to allow the Ds' to address the court, to seek an *ad-interim* injunctive order pending the determination of the merits of encl. 4 *inter parte*. Learned counsel argued that the Ds' was accorded sufficient time to respond to encl. 4 from the beginning, and further submitted as follows:

(i) The sealed cause papers for present writ (WA-22NCvC-822-12-2021), and all related cause papers (filed on 17 December 2021) together with the sealed copy of encl. 4 and supporting affidavit were duly served on Messrs Thomas Philips (the solicitors acting for both the Ds') at the time on 20 December 2021 at approximately 04:34 pm, followed with the service of the soft copies *z* email on the same day to both Ds' (andrewtykam@gmail.com, hannahzykam@gmail.com: encl. 13).

(ii) Ds' were duly informed that case management (CM) for the writ had been fixed on 17 January 2022, while CM for encl. 4 was fixed on 22 December 2021. Personal service of the cause papers was also attempted on the same day, on 22 December 2021 (encl. 14).

(iii) P's solicitor covering letter on 20 December 2021, expressly reminding the Ds' of the Federal Court's decision in *Monatech (M) Sdn Bhd v. Jasa Keramat Sdn Bhd* [2002] 4 CLJ 401; [2002] 4 MLJ 241, that with knowledge of the impending *quia timet* injunction pending in court, if they proceed to file any proceeding under the Mental Health Act 2001 to impede P's application for injunctive relief, committal proceedings will be taken without hesitation (exh. A-3: encl. 13).

(iv) Despite being put on express notice, D1 still proceeded to file in OS: WA-24NCVC-2619-12-2021 ("OS:2619") on 20 December 2021 at 6.49pm together with his supporting affidavit. The said OS is targeted to contest the mental health of P. D2 also filed her lengthy affidavit in the said OS to aver on P's alleged unhealthy mental condition, though she is not a party in the said OS:2619.

(v) Therefore, it warrants an *ad-interim* injunctive relief to be granted, with no objections for the Ds' to respond and file their respective replies.

(vi) The learned counsel highlighted the speech of Haidar J in *PPES Resorts Sdn Bhd v. Keruntum Sdn Bhd* [1990] 1 CLJ 528; [1990] 2 CLJ (Rep) 649; [1990] 1 MLJ 436, HC: s. 54(b) of the Specific Relief Act 1950 does not muzzle the court in any way from granting an interlocutory injunction in the nature of *quia timet* to restrain a person from instituting or prosecuting a proceeding in an appropriate case.

(vii) D1 must be injuncted from further prosecuting OS:2619 pending the determination of this suit. P is within his rights to restrain the prosecution of the said OS:2619, but it does not stop D1 from defending his position in the said OS:2619 when a striking out application is taken by P on the said OS:2619.

(viii) Since D1 had proceeded with the filing of OS:2619 though being put on express notice (20 December 2021) not to do so with the pending *ad-interim* injunction application already in court. Therefore, at this juncture, for encl. 4, P is only seeking for prayer 2 and 3, accordingly.

In the circumstances, P asked for orders as prayed.

The First Defendant's (D1) Submissions

[9] D1 objected to the granting of an *ad-interim* injunction to P and argued orally pending the filing of his affidavit in reply and written submissions. In a nutshell:

(i) They have just been served with the cause papers and require time to respond and reply and requested for another date.

(ii) OS 2619, filed on 20 December 2021, is already before the court to contest the mental health of P.

(iii) P now seeks to injunct this OS:2619 *via* this *ad-interim quia timet* injunction. There is no necessity for the *ad-interim* injunction since it would serve no purpose because when parties come to the CM of OS:2619 above, the court can make an order at that time whether or not that it should be stayed or deferred pending the hearing of this application for a *quia timet* injunction.

(iv) An urgency for an injunction is dependent on the nature and purpose of the order sought for if something is going to take place, which needs to be arrested. It is not the case here since OS:2619 is already before the court. This application by P is an abuse of process.

(v) The prayer for the injunctive relief is too broad in nature. Since there is already OS:2619 to determine the mental condition of P, then P's complaint and action should be taken in that OS, and for that court to determine and not by an injunction that is too wide and of general application from this court which does not confine itself to just OS:2619.

(vi) This is an abuse of process since there is another proceeding filed that is pending before another court (OS:2619). Therefore, if there is a complaint, then P needs to address it in that court, not by filling another suit before another court seeking an *ad-interim* order that will injunct the other case.

(vii) Learned counsel for D1 also argued that, since learned counsel for P had informed the court that they will be applying to strike out OS:2619, it becomes more pertinent that the *ad-interim* injunction should not be granted, or else it would put D1 at a disadvantage by allegedly restraining his hands in resisting the said striking out application. Prayer 2 of P's encl. 4 casts a wide net and gives a blanket order to P.

In the circumstances, D1 prays that the *ad-interim* injunction is disallowed.

The Second Defendant's (D2) Submissions

[10] D2 equally objected to the granting of an *ad-interim* injunction to P and argued orally pending the filing of her affidavit-in-reply and written submissions. In a nutshell:

(i) This is not an *ex parte* injunction but an *inter parte* application, and the defendant must be permitted to respond and defend themselves. D2 had responded with promptitude upon being served with the cause papers, contrary to P's submissions on the issue. Opportunity must be given to D2 to respond and file in her affidavit to contest the application.

(ii) D2 is not a party in OS:2619, and there is no foundation for this *ad-interim quia timet* injunction to be taken against her. Materials before the court show she did not threaten to institute a proceeding under the Mental Health Act 2001. It was D1 who did that, and therefore an *ad-interim* injunction against D2 in the circumstances is unwarranted.

(iii) D2 merely filed an affidavit of alleged facts in OS:2619 and argued (unconvincingly) at that juncture that it was not an affidavit in support of the said OS.

(iv) P had not met the criteria and threshold set by *Keet Gerald Francis Noel John v. Mohd Noor & Ors* [1995] 1 CLJ 293; [1995] 1 MLJ 193, CA. Usually, a party is to secure an *ex parte* injunction which would lapse after 21 days unless an *ad-interim* is granted to extend its efficacy premised on the proven threshold at the *ex parte* stage. What is before the court is an *inter parte* application, where the Ds' has not yet responded.

(v) There is no ground for this application and no *status quo* to preserve in an *ad-interim* injunction.

D2 prays that encl. 4 is to be dismissed against her.

The Law

[11] The court's jurisdiction to grant a *quia timet* injunction is derived from s. 50 of the Specific Relief Act 1950 and is given recognition in the following cases:

PPES Resorts Sdn Bhd v. Keruntum Sdn Bhd (*supra*)

> (1) The power of the Court to grant an injunction is contained in s. 50 of the Specific Relief Act 1950. While s. 54 of the Act states that a court cannot grant an injunction staying proceedings in a court not subordinate to it, the wording of the section does not prevent a court from granting an injunction in the nature of a *quia timet* to restrain the instituting or prosecuting of proceedings. The Court, therefore, had jurisdiction to grant the interim injunction in the way that it did. In *Fletcher v. Bealey*, Pearson J explained the law as to actions *quia timet* as follows:
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> > There are at least two necessary ingredients for a *quia timet* action. There must, if no actual damage is proved, be proof of imminent danger, and there must also be proof that the apprehended damage will if it comes, be very substantial. I should almost say it must be proved that it will be irreparable, because, if the danger is not proved to be so imminent that no one can doubt that, if the remedy is delayed, the damage will be suffered, I think it must be shown, if the damage does occur at any time, it will come in such a way and under such circumstances that it will be impossible for the plaintiff to protect himself against it if relief is denied to him in a *quia timet* action.

In *Mobikom Sdn Bhd v. Inmiss Communications Sdn Bhd* (*supra*) the Court of Appeal held that there was no doubt that a court had jurisdiction and power to grant an anti-suit injunction whenever the interests of justice call for or demand it. In *Ting Chuen Peng & Ors v. Yap Kiam & Anor* [2016] 10 CLJ 688; [2016] 7 MLJ 445, the court granted an *ex parte quia timet* injunction to restrain the defendants therein from taking any injunction to frustrate or to stop the Extraordinary General Meeting of the United Chinese School Committee's Association Malaysia (Dong Zong). The aforesaid court's decision was premised on the ground that if the EGM is halted because of an injunction, the association will suffer irreparable damage.

[12] Generally, an interim injunction may be granted if the requirements in *Keet Gerald Francis Noel John v. Mohd Noor* (*supra*) is met. The Federal Court in *Jaya Sudhir Jayaram v. Nautical Supreme Sdn Bhd & Ors* [2019] 7 CLJ 395; [2019] 5 MLJ 1, overturned the Court of Appeal's decision and reinstated the injunction granted in the High Court. It was held that the applicable test for the grant of interim injunctions is the "*Keet Gerald Francis* test":

(i) there must be a serious question to be tried;

(ii) damages not an adequate remedy;

(iii) the balance of convenience lies in favour of the injunction; and

(iv) the applicant can meet its undertaking in damages financially.

[13] *Ad-interim* injunction is formulated to maintain the *status quo* of litigating parties pending the disposal of an existing *inter partes* application between them. It is not an extension of the *ex parte* injunction, which lapses after the expiry of the 21 days. It is a fresh order that the judge decides by considering whether there is a need to maintain the *status quo* and the threshold in granting an *ad interim* injunction is low; it is aimed at preserving the *status quo* and the court should not be required to consider the question of balance of convenience, which would be dealt with at the *inter partes* stage. It is discretionary and may be allowed even if the parties do not consent to it being granted. Therefore, in the interest of smooth and expeditious administration of justice, parties should expeditiously move for the hearing of the *inter partes* injunction on its merits (see: *Petrodar Operating Co Ltd v. Nam Fatt Corporation Bhd & Anor* [2014] 1 CLJ 18; [2014] 1 AMR 401; [2014] 6 MLJ 189 at para [25], FC).

[14] For *quia timet* injunction, the court is empowered under s. 50 of the Specific Relief Act 1950 and it is targeted at restraining a party from carrying out an anticipated breach or legal wrong which is being threatened or which is very likely to be carried out, which if carried out would occasion irreparable harm to the applicant, who must show actual damage or of imminent danger and not mere speculation. The High Court in *Syarikat Faiza Sdn Bhd & Anor v. Faiz Rice Sdn Bhd & Anor And Another Case* [2017] 1 LNS

1648; [2019] 7 MLJ 175, granted a perpetual *quia timet* injunction to restrain the defendants from using the "Faiz" domain names. The court also stated that the purpose of granting a *quia timet* injunction was to prevent a multiplicity of judicial proceedings and to ensure finality in litigation between all the parties.

Findings Of This Court

[15] From the facts before me presently, I hold at this juncture that the Ds' are injuncted in prosecuting any purported proceedings under the Mental Health Act 2001 inclusive of OS:2619 (in which D1 had filed and included a lengthy affidavit, though D2 is not named as a party). I take cognisance that the Ds' had been put on prior express notice of the *quia timet* injunction pending in the court, but they, however, in haste proceeded with the filing of the OS:2619, at 06:48 pm on 20 December 2021. I also take cognisance at this juncture that the evidence relied on by the Ds' is the evidence of a layman with no qualification to make a determination or suggestion on the mental health of P. A person with the social standing of P, which is even acknowledged by the Ds' in OS:2619, would undoubtedly suffer imminent irreparable damage to his social standing if the *ad-interim quia timet* injunction is not granted to preserve the *status quo* of parties pending the determination of parties rights. The threshold in granting an *ad interim* injunction is low; it aims to preserve the *status quo*, nothing more. The court should not be required to consider the question of balance of convenience, which would be dealt with at the *inter partes* stage, but at this juncture, in the present circumstances, I find the balance of convenience favours preserving the *status quo* by granting the interlocutory injunction prayed pending the disposal of encl. 4.

[16] The allegations by P that the action under the Mental Health Act 2001 is an attempt to mitigate a succession of court battle losses by D1 in his legal battles with P suggests that OS:2619 is premised on a collateral purpose to halt the ongoing legal proceeding and to escape liability from judgments. To my mind, the issue must be ventilated to ensure the court is not used for such a purpose. The court takes cognisance that the Ds' in OS:2619 are parties in ongoing legal battles with P who are now seeking to examine the mental health of P, which, the more reason why the parties' *status quo* should be preserved by this injunctive relief. Even though D1 had already filed OS:2619 and is now registered before another court, it does not prevent the Court from injuncting D1 from prosecuting and D2 from supporting that OS pending the determination of encl. 4. Notwithstanding that D1 is injuncted from prosecuting OS:2619, it does not prevent him from defending 420 his position if P elects to apply to strike out the said OS (see *PPES Resorts Sdn Bhd v. Keruntum Sdn Bhd* (*supra*)).

[17] It was argued that D2 is not a party in OS:2619 and that the *ad-interim* injunction against her is not warranted. Her learned counsel stated that D2 merely filed an affidavit of facts in OS:2619. In this regard, I also took cognisance of such an argument of her claimed impartiality in OS:2619. However, that did stop her from filing a 244-page affidavit, which if it is not to contest the said OS, then it has to be to support regardless of the title of the affidavit. The label placed on the affidavit is unimportant, but what is crucial is the intent and contents of the affidavit. Whether the Ds' are in the circumstances acting in concert must be determined, being parties of interest in the other ongoing legal battle between the parties. I find that this issue must be ventilated at the substantive hearing of encl. 4 to ensure objectivity before the court. In the circumstances, contrary to Ds' arguments, the threshold requirements of *Keet Gerald Francis Noel John* (*supra*) have been met to grant the *ad-interim* injunction. The Ds' are accorded every opportunity to file their replies for the *inter parte* hearing on the merits of encl. 4 before the court.

[18] On a separate note, it must be observed that this court has not made any final determination of this matter as the merits have yet to be ventilated and determined on encl. 4 between the parties herein. To my mind, any purported appeal would be premature. The word decision should mean not a part of the decision or the grounds for it but the decision as a whole (see *Kanhk Sunder Bibi v. Ram Lekhan Pandey* AIR 1956 Pat 325 AIR 1956 Pat 328). In *Tetuan J & S Holdings Sdn Bhd v. A Karim Hasan & Anor* [2000] 4 CLJ 152; [2000] 6 MLJ 739, VT Singham J held that an order that does not deal with the final rights of the parties on the subject matter in dispute is not conclusive and thus not appealable. The Federal Court in *Asia Pacific Higher Learning Sdn Bhd v. Majlis Perubatan Malaysia & Anor* [2020] 3 CLJ 153; [2020] 2 MLJ 1, FC held:

> ... The right to appeal in civil matters under s. 67 of the CJA is subject to the definition of 'decision' as found in s. 3 of the CJA. Although s. 67(1) of the CJA provides that the Court of Appeal has jurisdiction to determine appeals from any 'judgment' or 'order' of any High Court in civil matters, it is clear from a plain reading of s. 3 of the CJA that a 'decision', 'judgment' or 'order' excludes a ruling made in the course of a trial or hearing that does not finally dispose of the rights of the parties ...

[19] In the circumstances, while on the one hand, we have a qualified diagnosis (unrefuted) by a duly qualified medical practitioner in the related field, Dr Deva Dass MBBS (Melb), DPM (England) MRANZCP, AM (Mal), Consultant Psychiatrist, who had carried out a neuropsychiatric evaluation, and certifying on 16 December 2021 that P has no identifiable psychiatric or neurological disorders. He can live an active life and be involved with his business and life in general. On the other hand, we have the Ds', attempting to say otherwise, predicated on the evidence of a layman,

Shafee's affidavit and statutory declaration, based allegedly on a telephone conversation of approximately two minutes in duration that he found P to be incoherent. This evidence by Shafee was already used by the Ds' to seek an adjournment in the Court of Appeal hearing, which was denied (KKW-20, KKW-21: encl. 6), and the same untested evidence is now being used for OS:2619. As it is now, the merits of encl. 4 have not yet been fully canvassed and ventilated by this court.

[20] In light of the foregoing, by and large, at this juncture, I find that there are serious issues to be tried in the present case. It is my considered view that in the circumstances of the case, the scale presently tilted in P's favour for granting the order as prayed, with an undertaking for damages in place, pending the determination of encl. 4 on its merits.

Conclusion

[21] All things considered and after closely scrutinising the application and examining all materials adduced before me at this juncture, including the oral submissions of learned counsels for the parties, I allowed P's application in encl. 4 for prayer 2 and 3 therein with no order as to costs. With this, an *ad-interim* injunction is granted to preserve parties' *status quo*, with *inter parties* hearing fixed on the 10 March 2022 (extended by this court to 18 March 2022). Pending that hearing, Ds' are permitted to file their replies and for P to reply accordingly. The filing of the Ds' statement of defence to this suit is also deferred to the conclusion of the determination of encl. 4 with no objection from P.